

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (TPJ)

STATE OF NEW YORK *ex rel.*

Attorney General DENNIS C. VACCO, *et al.*,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (TPJ)

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U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

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**PLAINTIFF' OPPOSITION TO MICROSOFT MOTION  
FOR PROTECTIVE ORDER WITH RESPECT TO  
SIXTH JOINT REQUEST FOR PRODUCTION OF DOCUMENTS**

Microsoft's motion for a protective order essentially rehashes many of the arguments Microsoft has been making for the past two months while resisting production of relevant and probative data contained in its databases. These arguments continue to be without merit, and Microsoft's motion should be denied.

**Scope**

In fact, the plaintiffs' Sixth Request for production (attached) is narrowly tailored and sufficiently specific. It is limited to data contained in the two specifically named Microsoft databases that have been the subjects of plaintiffs' prior several motions to compel. It also is narrowly limited to data relating to a handful of Microsoft operating system products (listed in Definition 9 of the Request) and to Internet Explorer. As plaintiffs have previously noted, these products are at the very center of this case.

**Burden**

Microsoft's motion suggests that the Sixth Request will be quite burdensome. In fact, however, the actual experience of extracting data from these databases up to now for that portion of them to which Microsoft has permitted access -- the OEM channel -- has been relatively straightforward, and there is no reason to believe that finding and collecting data from other "channel fields" in the database will require significantly, if any, more effort -- particularly given the limited scope of the request.

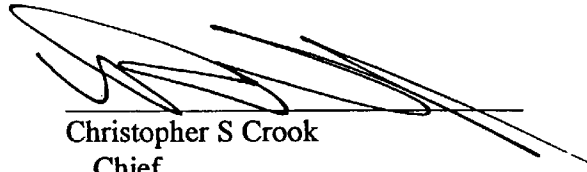
**Timing**

Microsoft's primary attack on the Sixth Joint Request is that it is an "11th-hour" request that should have been made long ago. This argument ignores the fact that plaintiffs have been seeking this data since at least August 14, and have been unable to obtain or even learn any details about it precisely because of Microsoft's persistent efforts to block its production. Had Microsoft complied with the Third Joint Request in a timely fashion, plaintiffs would have learned weeks ago about the kind of data contained in these specific databases, and any disagreement that existed between plaintiffs and Microsoft about whether non-OEM data in the

databases was covered by that Request would have been long since raised and resolved. Instead, Microsoft's intransigence resulted in plaintiffs not seeing any of the data until last week, and only then learning that the database contained, but Microsoft would not permit access to, relevant Windows and IE data for non-OEM channels.

Accordingly, Microsoft's motion should be denied.

DATED: October 20, 1998



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Chief

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David Boies

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Antitrust Division

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 20th day of October, 1998, I served a true and correct copy of the foregoing Plaintiffs' Opposition to Microsoft Corporation Motion for Protective Order by Hand Delivery upon:

Counsel for Microsoft Corporation

Steven L. Holley  
Sullivan & Cromwell  
1701 Pennsylvania Avenue  
Washington, D.C. 20006

  
Phillip R. Malone

## **Attachment**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,  
  
Plaintiff,

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MICROSOFT CORPORATION,  
  
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Civil Action No. 98-1232 (TPJ)

STATE OF NEW YORK *ex rel.*  
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Plaintiffs,

v.

MICROSOFT CORPORATION,  
  
Defendant.

Civil Action No. 98-1233 (TPJ)

**PLAINTIFFS' SIXTH JOINT REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff the United States and plaintiff States hereby request, pursuant to Rule 34 of the Federal Rules of Civil Procedure, that defendant Microsoft Corporation produce for inspection and copying the following documents in its possession, custody or control, on October 20, 1998

at 9:00 a.m. at Microsoft's Offices in Redmond, Washington, or at such place(s) and time as may be mutually agreed by the parties.

#### DEFINITIONS

1. "Actions" means *United States v. Microsoft Corporation*, Civil Action No. 98-1232 (TPJ), and *State of New York ex rel. Attorney General Dennis C. Vacco, et al., v. Microsoft Corporation*, Civil Action No. 98-1233 (TPJ).
2. "And" and "or" are intended to have both conjunctive and disjunctive meanings.
3. "Document" has the broadest meaning accorded to it by Rule 34 of the Federal Rules of Civil Procedure, and includes but is not limited to all of the matters defined in Rule 1001 of the Federal Rules of Evidence. It also includes each computer file and written, recorded, and graphic material of every kind in the possession, custody or control of Microsoft, electronic correspondence and drafts of documents, electronic mail messages, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of Microsoft. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Unless otherwise specified, the term "document" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans and engineering blueprints.
4. "ICP" means any Internet Content Provider that creates World Wide Web content viewable by Internet browser product users in the United States.
5. "ISP" means any Internet Service Provider, including any Online Service Provider, providing service to customers in the United States.

6. "ISV" means any producer of any software product for sale or licensing to customers in the United States.

7. "Investigations" means the United States' and/or any State's investigations of Microsoft's agreements with OEMs, ISPs, ICPs, and any other persons concerning the installation, licensing, distribution, marketing, or promotion of Internet Explorer.

8. "Microsoft" means Microsoft Corporation, each of its predecessors, successors, parents, divisions, subsidiaries, and affiliates, each other person or entity directly or indirectly, wholly or in part, owned or controlled by it, each partnership or joint venture to which any of them is a party, and all present and former officers, directors, employees, agents, consultants, or other persons acting for or on behalf of any of them.

9. "Microsoft operating system product" means each commercially released version of Windows 95, Windows 98, any 16-bit Windows operating system, MS-DOS, and Windows NT Workstation.

10. "OEM" means any manufacturer of personal or notebook computers for sale to customers in the United States.

11. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, or other business, legal, or governmental entity.

12. "Relating to" means discussing, describing, referring to, reflecting, containing, analyzing, studying, reporting on, commenting on, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.



13. "Third Party" means any person other than the United States, any State, Microsoft, or any officer, director, employee, agent, consultant, or other person acting for or on behalf thereof.

#### **INSTRUCTIONS**

1. If documents responsive to this Request previously have been submitted to the Antitrust Division or any of the plaintiff States and have not been returned by the Division or those States (or destroyed at your direction or pursuant to judicial order), you need not reproduce such documents. Please identify all documents previously produced, including the date of submission and the document control number or other identification of where in that submission the documents can be found.

2. All drafts and non-identical copies of responsive documents should be produced.

3. For each document or portion thereof withheld under a claim of privilege, submit a sworn or certified statement from Microsoft's counsel or one of Microsoft's officers identifying the withheld document by author, addressee, date, number of pages, subject matter, and document control number; specifying the nature and basis of the claimed privilege and the paragraph of this Request to which the withheld material is responsive; and identifying each person to whom the withheld material was sent and each person to whom the withheld material or its contents, or any part thereof, was disclosed. Denote all attorneys identified with an asterisk.

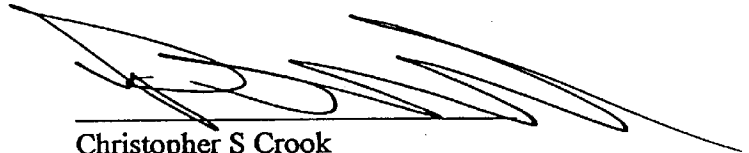
4. This Request shall be deemed continuing as provided in the Federal Rules of Civil Procedure, so as to require further and supplemental production if additional documents called for by this Request are obtained or created by Microsoft between the time of the Request

and the time of trial.

REQUEST

1. All data contained in or other contents of Microsoft's "MS Sales" or "OEM Query" databases relating to any Microsoft Windows operating systems product (excluding Windows NT) or to Internet Explorer, regardless of the "field" or "channel" in the database by which such data is organized (and including but not limited to the "finished goods" and "online" channels), including but not limited to data relating to license terms, distribution, sales, number of units shipped, royalties paid, sales forecasts, revenue, or costs, for the time period January 1, 1990 to present.

DATED: October 19, 1998



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